

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33(1) of the Housing (Scotland) Act 1988 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/18/3250**

**Re: Property at 30 Sutherland Drive, Airdrie, ML6 9XA (“the Property”)**

**Parties:**

**Mr Manvir Singh, 49 Blairhill Street, Coatbridge, ML5 1PH (“the Applicant”) per his agents, Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF**

**Mr Andrew Duncan and Ms Holly McKay, 30 Sutherland Drive, Airdrie, ML6 9XA (“the Respondents”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession be granted.**

**Background**

1. By application received between 4 December 2018 and 12 December 2018 (“the Application”), the Applicant’s Agents, on behalf of the Applicant, made an application to the Tribunal for a possession order in terms of Section 33 of the Act and in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). A copy of the tenancy agreement between the parties, a copy of a Notice to Quit with proof of service and a copy of notice in terms of Section 19A of the Act to North Lanarkshire Council with proof of service were lodged as part of the Application.
2. On 8 January 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 8 March 2019 at 10.00 at The Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT. The CMD was intimated to both parties.

3. The Respondents made no written representations to the Tribunal in respect of the Application.

#### **Case Management Discussion**

4. The CMD took place on 8 March 2019 at 10.00 at the said Glasgow Tribunals Centre. The Applicant was not present and was represented by Ms Vikki McGuire of the Applicants' Agents who confirmed the Order sought. Both Respondents were present and unrepresented.
5. I explained to the parties that the Application is for possession of the Property on termination of the tenancy. I explained that the Act states that if the tenancy is brought to an end properly and in accordance with the common law and the Act, the Tribunal must grant an Order.
6. Ms Vikki McGuire of the Applicants' Agents who confirmed that the Order was sought.
7. Mr. Duncan advised me that there had been ongoing problems with the condition of the Property being dampness and mould and the order should not be granted on that basis. He accepted that the Respondents had not made an application to the Tribunal in respect of the statutory repairing standard. I explained that the Respondents only challenge could be in respect of an error in the procedure which terminated the tenancy and Mr. Duncan fairly accepted that the Respondents had no challenge in this respect.
8. I asked the Respondents if they had sought legal advice or advice from an agency such as Shelter or if they had approached the local housing authority. Mr. Duncan advised me that the Respondents had approached Sanctuary Housing Association in Priesthill, Glasgow and were on the waiting list with that housing provider. Mr. Duncan advised me that he had been advised that the anticipated time for an offer of housing to be made is eight weeks.
9. I asked Ms. McGuire if she had a view if the Applicant would be likely to agree to an Order being suspended for eight weeks to allow an offer of housing to be made to the Respondents. Ms. McGuire advised me that she thought this might be likely if the Applicant had evidence of this likelihood. I asked the Respondents if they had any evidence or confirmation of the advice from Sanctuary Housing Association. Mr. Duncan advised me that the information in respect of the offer of housing had been given to him by telephone. Mr. Duncan stated that the Respondents intended to vacate the Property as soon as an offer of housing was made to them, which might be before the eight weeks advised by Sanctuary Housing Association.

#### **Findings in Fact**

10. From the Application and the CMD, I found that a tenancy agreement had existed between the parties until terminated by the Applicant by virtue of a

Notice to Quit served on the Respondents by the Applicant's Agent and that tacit relocation is not operating. I found that the notice in terms of Section 19A of the Act had been properly intimated to the relevant local authority. Accordingly, I found that the statutory and common law provisions required to terminate the tenancy between the parties had been satisfied.

11. From the CMD, I accepted Mr Duncan's position on behalf of the Respondents that they had made an application to Sanctuary Housing Association in Priesthill, Glasgow, that they were on Sanctuary Housing Association's waiting list and that it is likely that an offer of housing would be made to the Respondents in around eight weeks.

#### **Decision and Reasons for Decision**

12. Having found that the tenancy had been terminated and the correct procedure followed, I had regard to Section 33(1) of the Act which states that "the First-tier Tribunal shall make an order" and to Rule 17(4) of the Rules which state that the Tribunal "may do anything at a case management discussion which it may do at a hearing, including make a decision" and, accordingly, I determined to grant an Order for possession.
13. I then had regard to the date on which the Order might become effective. I had regard to the Respondents position in respect of seeking alternative accommodation and to Ms. McGuire's position on behalf of the Applicant that there was no tangible evidence of the offer of housing to induce the Applicant to agree to the Order being suspended for a period longer than the usual period of thirty days. I had regard to Rule 2 of the Rules which state that the overriding objective of the Tribunal "is to deal with the proceedings justly". I had regard to the prejudice to the Applicant in suspending the Order for a period longer than the usual period of thirty days and balanced this against the prejudice to the Respondents in having to remove from the Property a short time before alternative accommodation might be available to them, and, although I appreciated that an offer of housing might not be made to the Respondents within eight weeks, I was of the view that it was just and proportionate in all the circumstances to suspend the Order for eight weeks.

#### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

K. Moore

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**Legal Member/Chair**

*8 March 2013*

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**Date**